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Microsoft

August 16, 2011

The Honorable Charles E. Grassley
United States Senator
135 Hart Senate Office Building
Washington, D.C. 20510-1501

Dear Senator Grassley,

I appreciated the opportunity to provide testimony before the Senate Committee on the Judiciary, Subcommittee on Immigration, Refugees and Border Security, on July 26, 2011 during its hearing on "The Economic Imperative for Enacting Immigration Reform." I also appreciate the opportunity to provide additional information in response to your questions submitted for the record and to elaborate on the importance of targeted immigration reforms. Microsoft looks forward to working with you and the other members of the Subcommittee to advance collaborative, bipartisan solutions to today's most pressing issues in high skilled immigration.

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According to a recent report on the Annual Tech-Sector Job Cuts, approximately 484,319 high-skilled layoffs have taken place since 2007.

- *Does Microsoft actively seek American workers with the required skills who have fallen to such layoffs?*

Yes, Microsoft seeks American workers with the required skills for our open positions. For our immediate workforce needs, the challenge of filling our open positions with the right talent in such a competitive environment mandates a comprehensive strategy that includes recruiting experienced workers in our industry while also pursuing the right talent graduating from universities. Our expansive search for talent extends throughout the United States and around the world. For us, it's all about the finding people with the skills to contribute to our strategies for innovation and growth, regardless of whether the individual comes to us from another job, from school, or from having been recently laid off.

I believe the report you refer to was released by Challenger, Gray & Christmas, Inc. on July 20, 2011 (hereinafter, the "CGC Report"). The CGC Report concludes that the technology sector "is one of the best performing industries in the economy at the moment," emphasizing that the sector "is currently experiencing record low downsizing" while being "one of the few areas actually adding workers." It also includes the following additional informative observations about the strength of jobs in the technology sector:

- In the first half of 2011, the number of job cuts fell sharply in the technology sector compared with the same period in 2010—and far faster than the decrease in job cuts across all industries.
- "The biggest decline in tech-sector job cuts was experienced by computer firms, which saw the number of planned layoffs plunge 81 percent, from 16,964 in the first half of 2010 to 3,178 this year."
- Job cuts in the technology sector accounted for only 5.8% of job cuts across all industries.
- "[T]he overall health of the technology sector remains very strong . . . . It is highly unlikely that planned layoffs in the second half of the year will be heavy enough for the year-end total to surpass last year's record low 46,825 job cuts."

The question states that "approximately 484,319 high-skilled layoffs have taken place since 2007." That number appears to come from aggregating the total number of job cuts for 2007 through 2010, as reflected by data provided in the CGC Report, shown here:

Annual Tech-Sector Job Cuts
2000 – 2010

	Q1	Q2	Q3	Q4	Total	% of All Cuts
2000	19,478	13,940	26,673	43,175	**103,266**	**16.8%**
2001	161,520	151,869	213,420	168,772	**695,581**	**36.0%**
2002	110,247	132,953	91,450	133,511	**468,161**	**32.0%**
2003	61,032	36,967	47,998	82,328	**228,325**	**18.5%**
2004	29,513	34,213	54,701	57,686	**176,113**	**17.0%**
2005	59,537	39,720	41,439	34,048	**174,744**	**16.3%**
2006	39,379	29,226	50,957	11,619	**131,181**	**16.0%**
2007	32,021	32,314	26,242	16,718	**107,295**	**14.0%**
2008	17,345	33,644	38,269	66,312	**155,570**	**12.7%**
2009	84,217	33,891	24,808	31,713	**174,629**	**13.6%**
2010	22,338	13,037	5,150	6,300	**46,825**	**8.8%**

Source: Challenger, Gray & Christmas, Inc.©

However, this set of data does not accurately reflect the number of job *losses* in the technology sector because it does not take into account new job creation. While it therefore provides a basis to understand *overall downsizing trends* from quarter to quarter or year to year, it does not reflect *net* job losses in the industry over that period of time.

In fact, the data from the CGC Report indicates we are now seeing some of the lowest numbers of job cuts in the technology sector in the last decade. Notably, the annual job cuts in 2007, 2008, 2009 and 2010 were all below the levels reported in any of the years from 2001 through 2005. In addition to the 60% decline in job cuts in the first half of 2011, the total job cuts in 2010 represented a stunning 72% drop in job cuts from 2009. Equally striking is the dramatic decrease in the proportion of overall job cuts represented by the technology sector, steadily dropping from 36.0% in 2001 to just 8.8% in 2010 and 5.8% today. Statistics such as these confirm the dual unemployment rate that I discussed in my testimony. In today's economy more than ever, there is an increasing opportunity gap between those with a college education and those with only a high school diploma or less. Nowhere is this more apparent than in the technology sector.

The CGC Report also provides important quarterly data for 2010 and 2011, illustrating a clear and persistent overall decrease in the number of job cuts in the technology sector:

2010 Technology Job Cuts

	Q1	Q2	Q3	Q4	Total
Computer	5,823	11,141	1,219	3,867	**22,050**
Electronics	1,720	686	1,719	947	**5,072**
Telecom	14,795	1,210	2,212	1,486	**19,703**
TOTAL	22,338	13,037	5,150	6,300	**46,825**

2011 Technology Job Cuts

	Q1	Q2	Q3	Q4	Total
Computer	1,887	1,291			**3,178**
Electronics	2,202	2,115			**4,317**
Telecom	4,552	2,261			**6,813**
TOTAL	**8,641**	**5,667**			**14,308**

Source: Challenger, Gray & Christmas, Inc.©

These trends identified by the CGC Report explain why there is a very real shortage of the right talent for the job opportunities available in the technology sector. A recent article by Bloomberg Businessweek illustrates how competitive the labor market has become for technology jobs. Entitled *"Hiring Like It's 1999: The tech boom is fueling a surge in jobs and creative recruiting,"* the article cites a national unemployment rate for technology professionals of only 3.3 percent in June 2011.[1] The article also notes that technology companies are in such high

[1] http://www.msnbc.msn.com/id/43982573. Last accessed August 9, 2011.

competition with one another for talent that recruitment-related strategies have turned increasingly aggressive. Alice Hill, the managing director of technology career website Dice.com, explains the effects of the extreme competition for a finite pool of talent: "There's so much poaching going on, and now we see the rise of the crazy perks." The scarcity of qualified workers also has firms looking immediately to companies with announced layoffs for potential talent: "Recruiters are also circling Cisco like vultures, anticipating the August layoffs in the hope of finding qualified employees."

For our company, the experience has been no different. As I indicated in my testimony, our primary strategy for addressing this scarcity of skilled workers has been to invest in programs to increase the educational pipeline for America's students, particularly in science, technology, engineering and mathematics disciplines. Our combined commitments of over $100 million in K-12 education, educational innovations and scholarships during the past year alone reflect the critical nature of this issue to our company.

In addition to these investments in improved educational strategies, Microsoft has also invested heavily in programs to provide technology training and resources to help people find employment in a knowledge-based economy. Against the backdrop of the deep national recession that put millions of Americans out of work, Microsoft launched Elevate America. This program included a voucher program in participating states across the country to provide no-cost technology skills training for over 900,000 workers; a veterans initiative, to help U.S. veterans and their spouses transition from military to civilian employment; community initiative partnerships with non-profit organizations that provide technology access, training, and resources for persons seeking employment; and no-cost and low-cost online resources to help people gain the basic- to intermediate-level computer skills that so many of America's jobs require.

But our investments in education and training are necessarily a longer term solution. With the unemployment rate in the technology sector at 3.3%—better than what most economists consider full employment—and the lowest levels of downsizing in the past 11 years, our nation's approach to high skilled immigration must cultivate an environment in which companies such as Microsoft can fill our essential positions with the right talent and continue to drive the U.S. economy forward.

In 2009, Microsoft announced that it would cut 5,000 jobs.

- *How many jobs were in fact eliminated and what was the ratio of those held by American workers and those who held a temporary visa?*

On March 3, 2009, I wrote in response to your earlier inquiry to provide you with information about our efforts to plan our business operations effectively during an incredibly challenging economic environment for the country. In my letter I explained that in January 2009, we projected the elimination of 5,000 jobs, but that we also expected to create 2,000 to 3,000 new jobs during the same timeframe through our ongoing investments in innovation. I also explained that the numbers provided by these projections would likely involve a large number of different countries. My responses were provided with the best information we had available, given that we were only in the beginning stages of our workforce adjustment efforts.

A review of our records indicates the following:

- In 2009, Microsoft had 2,928 terminations due to job eliminations in the United States, the last of which were announced in November 2009.
- During the same period—from January 2009 to November 2009—Microsoft hired 2,614 employees in the United States, of which 1,531 were experienced hires and 1,083 joined us from university recruiting efforts.
- 482 of these hires were individuals who originally received a notification of job elimination, but who were hired into different jobs at Microsoft and therefore continued their employment.
- From December 2009 to June 2011, we have hired an additional 7,634 employees in the U.S., of whom 6,106 were experienced hires and 1,528 joined us from university recruiting efforts. A portion of this overall hiring volume is attributable to our efforts to deal with regular voluntary employee attrition, a fact of life for any employer.

All of our employment decisions—including the termination of employment of any individual—are made in a manner that complies with Title VII of the Civil Rights Act of 1964. Decisions to terminate employment as a result of job eliminations or otherwise, are never based on an employee's citizenship or nationality. Consequently, we did not consider the nationality or visa status of our employees in our 2009 decisions about job eliminations.

The job eliminations in 2009 due to the economic downturn impacted different groups within the company differently. In those job groups such as engineering and software development, where we employ more foreign nationals with temporary work authorization, the percentage of those visa holders impacted was greater than in other groups where the numbers of visa holders are much smaller and the percentages therefore less meaningful. For example, for job titles in our Engineering profession, 9.4% of the job eliminations impacted foreign nationals with temporary work authorization. For job titles in software development engineering and software testing, that percentage was 12.3%. In contrast, for job titles in our Marketing profession, only 2.8% of the impacted individuals were foreign nationals with temporary work authorization. The overall percentage of foreign nationals on temporary work visas who were affected by the job eliminations overall fell between these figures, at about 5%. Notably, Microsoft has never been an H-1B dependent employer, with well below 15% of our employees in H-1B status. We also have not seen any significant change in the overall proportion of U.S. workers as compared to foreign national employees working for Microsoft in the U.S. on temporary work visas.

- *Have you since rehired any of those who were laid off, and if so, how many were American citizens and how many were temporary workers? Were any new foreign hires, or re-hires, for jobs that were previously held by, or duties performed by an American worker? If so, how many?*

Yes, Microsoft both retained and rehired some of the employees who were informed of job eliminations. In 2009, Microsoft notified a total of 3,410 employees in the United States of job eliminations. In my response to the previous question above, I indicated that Microsoft had 2,928 terminations due to job eliminations in the United States. Along with that group, an additional 482 employees received notifications of job eliminations, but were subsequently hired into other open positions prior to termination. Of the 2,928 terminations, an additional 279 employees have subsequently been rehired into other positions. Combined, Microsoft was able to hire 761 of the 3,410 notified of job eliminations into other positions—a 22.3% rate. For individuals who were terminated and subsequently rehired, 93.9% were U.S. workers. Again, let me emphasize that Microsoft does not take into consideration an individual's citizenship or nationality in its hiring decisions.

Microsoft's job eliminations were based on business decisions to strategically adjust our workforce in specific areas. Individuals who were hired subsequent to the job eliminations—whether a new employee or the re-hiring of a laid off employee—were not placed into jobs previously held by laid off U.S. workers. Rather, these were either new positions created in response to evolving business needs or positions opened due to voluntarily departures associated with normal employee attrition.

- *Has Microsoft partaken in the common practice of "knowledge transfer" where an American worker is tasked with training their foreign replacement and is then terminated?*

No, Microsoft does not engage in the practice of having its U.S. workers train foreign national employees with temporary work visas, only to then terminate the U.S. worker.

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As a significant employer and innovation leader in the U.S. economy—with 83% of our $9.6 billion annual research and development budget invested in the U.S.—we are grateful that you and other members of this Subcommittee are considering the best approaches to addressing the current challenges with our country's approach to high skilled immigration. To continue to innovate and create jobs in the U.S., we and other industry leaders need to remove barriers to attracting and retaining the right talent. We urge this Subcommittee to collaborate on solving the pressing green card backlog and its excessive waiting periods; on finding ways to retain the best foreign students, educated at our own universities, after graduation so they can contribute to our economy; and on ensuring that our temporary professional visa programs have the right enforcement for compliance and integrity while also maintaining the flexibility to meet the needs of employers navigating shortages of skilled workers. I am confident that working together, these solutions are well within our collective grasp.

We hope this information is helpful to you. We look forward to working with you and your staff if we can be of further assistance in addressing important reforms for high skilled immigration.

Sincerely,

Bradford L. Smith
General Counsel
Senior Vice President, Legal and Corporate Affairs